



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2022-0894; FRL-10411-01-OGC]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with the Clean Air Act, as amended (CAA or the Act), EPA is providing notice of a proposed consent decree in *Comité Progreso de Lamont, et al. v. United States Environmental Protection Agency, et al.*, No. 3:21-cv-08733-WHA (N.D. Cal.). On November 10, 2021, Plaintiffs Comité Progreso de Lamont, Committee for a Better Arvin, Committee for a Better Shafter, Central California Environmental Justice Network, Association of Irrigated Residents, Medical Advocates for Healthy Air, National Parks Conservation Association, and Sierra Club filed a complaint in the United States District Court for the Northern District of California. Plaintiffs alleged that the Environmental Protection Agency (EPA or the Agency) failed to perform certain non-discretionary duties in accordance with the Act. These duties pertain to promulgation of a Federal Implementation Plan (FIP) for the San Joaquin Valley area of California to address certain remaining nonattainment plan requirements for the 1997, 2006, and 2012 PM_{2.5} national ambient air quality standards (NAAQS). The proposed consent decree would establish deadlines for EPA to sign notices of proposed and final actions.

DATES: Written comments on the proposed consent decree must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2022-0894, online at <https://www.regulations.gov> (EPA's preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID number for this action.

Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Additional Information about Commenting on the Proposed Consent Decree” heading under the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Geoffrey L. Wilcox, Air and Radiation Law Office, Office of General Counsel, U.S. Environmental Protection Agency; telephone (202) 564-5601; email address wilcox.geoffrey@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining a Copy of the Proposed Consent Decree

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2022-0894) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

The electronic version of the public docket for this action contains a copy of the proposed consent decree and is available through <https://www.regulations.gov>. You may use <https://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search.”

II. Additional Information about the Proposed Consent Decree

This case pertains to EPA's duty to promulgate a FIP or FIPs to address certain nonattainment plan requirements for the for the San Joaquin Valley area of California for the 1997, 2006, and 2012 PM2.5 NAAQS. EPA's duty at issue in this case arises from a finding of failure to submit that the agency made on December 6, 2018, and that was effective on January 7, 2019. Since that time, however, California submitted two State Implementation Plan (SIP) submissions intended to address the relevant nonattainment plan requirements for all of these PM2.5 NAAQS simultaneously. Through a series of rulemakings, EPA has taken action on portions of these SIP submissions for specific iterations of the PM2.5 NAAQS that have reduced the original scope of its FIP duty. The proposed consent decree would establish deadlines for EPA to take actions to address the remaining portions of its FIP duty.

Specifically, the proposed consent decree would establish deadlines for EPA to take action pursuant to the CAA to sign a notice or notices of a proposed and final FIP by no later than July 31, 2023, and September 30, 2024, respectively, to address the contingency measures element of the: (1) nonattainment plan for the section 189(d) requirements for the 1997 annual PM2.5 NAAQS, (2) nonattainment plan for the Serious area requirements for the 2006 24-hour PM2.5 NAAQS, and (3) nonattainment plan for Moderate area requirements for the 2012 PM2.5 annual NAAQS. In addition, the proposed consent decree would establish a deadline for EPA to sign a notice or notices of a final FIP by no later than September 30, 2024, to address all plan elements, except for the contingency measures element and the baseline emissions inventory element, for the nonattainment plan for the section 189(d) requirements for the 1997 annual PM2.5 NAAQS.

The proposed consent decree also provides that if California submits and EPA fully approves a SIP submission or submissions that satisfy any of the specific plan requirements above, then EPA's obligation to promulgate a proposed or final FIP under the consent decree with respect to the satisfied nonattainment plan element is automatically terminated, and Plaintiffs' claim as to that plan element is moot. Also, if EPA issues a clean data determination,

i.e., a determination that the air quality of an area has attained the NAAQS, for the San Joaquin Valley with respect to 1997 annual PM_{2.5} NAAQS, the 2006 24-hour PM_{2.5} NAAQS, or the 2012 PM_{2.5} annual NAAQS, in accordance with 40 CFR 51.1015, then EPA's obligation under the consent decree to take the action or actions required with respect to that NAAQS is automatically terminated.

In accordance with section 113(g) of the CAA, for a period of thirty (30) days following the date of publication of this document, the Agency will accept written comments relating to the proposed consent decree. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

III. Additional Information about Commenting on the Proposed Consent Decree

Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2022-0894, via <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from this docket. EPA may publish any comment received in its public docket. Do not submit to EPA's docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document. Note that written

comments containing CBI and submitted by mail may be delayed and deliveries or couriers will be received by scheduled appointment only.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the <https://www.regulations.gov> website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Please ensure that you submit your comments within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

Gautam Srinivasan,
Associate General Counsel.

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